IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

In the matter of an appeal in terms of Article 154G of the Constitution read together with Section 11 (1) of High Court of the Province (Special Provisions) Act No. 19 pf 1990.

Court of Appeal Case No:
CA (PHC) 38/2016

High Court Balapitiya Case No:
HCRA/895

Magistrate's Court Balapitiya
Case No: 24668

Officer-in-Charge
Police Station,
Karandeniya

Complainant

Vs.

1. Kaluwadeva Ruwan Handapangoda, Denagoda, Dakunu Magala, Karandeniya.

2. Ranepurahewa Mulin, No.06, But Kalla, Kakiris Kanda, Karandeniya.

Respondents

AND

Ranepurahewa Mulin,
No.06, But Kalla, Kakiris Kanda,
Karandeniya.

2nd Respondent-Petitioner

Vs.

Kaluwadeva Ruwan Handapangoda, Denagoda,
Dakunu Magala,
Karandeniya.

1st Respondent-Respondent

AND NOW BETWEEN

Ranepurahewa Mulin,
No.06, But Kalla, Kakiris Kanda,
Karandeniya.

2nd Respondent-Petitioner-Appellant

Vs.

Kaluwadeva Ruwan Handapangoda, Denagoda,
Dakunu Magala,
Karandeniya.

1st Respondent-Respondent-Respondent

Before: **Prasantha De Silva, J.**
K.K.A.V. Swarnadhipathi, J.

Counsel: Mahinda Nanayakkara with Manoj Sanjeewa and Wasantha Vidanage for the 2nd Respondent-Petitioner-Appellant.

No appearance for the 1st Respondent-Respondent-Respondent.

Since there is no appearance for the Respondent, Counsel for the Appellant wishes the Court to deliver Judgment on the written submissions already filed.

Written submissions tendered on : 04.09.2020 by the 2nd Respondent-Petitioner-Appellant.

Judgment delivered on : 06.02.2023

Prasantha De Silva, J.

Judgment

The 2nd Respondent-Petitioner-Appellant (hereinafter referred to as the Appellant) has preferred this appeal seeking to set aside the Order dated 24.05.2016 pronounced by the learned High Court Judge of Balapitiya.

The facts of the instant case are as follows:

The Officer in charge of Police Station Karandeniya had filed an information under Section 66 of the Primary Courts' Procedure Act No. 44 of 1979 in the Magistrate's Court of Balapitiya in case bearing No.24668. The Learned Magistrate acting as the Primary Court Judge having followed the procedure stipulated in Section 66 of the Primary Courts' Procedure Act No. 44 of 1979 had allowed 1st and 2nd Respondents to file affidavits, counter affidavits and written submissions in order to conclude the inquiry. Thereafter, the learned Magistrate had delivered the Order on 03.08.2010 in favour of the 1st Respondent.

Being aggrieved by the said Order, the 2nd Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Southern Province Holden at Galle, seeking a direction from the learned High Court Judge for learned Magistrate to have a re-inquiry and decide the matter in dispute a fresh.

It is seen that the learned High Court Judge allowed the application of the 2nd Respondent-Petitioner and referred the matter for inquiry.

The learned Magistrate having inquired the matter for the second time had held against the 2nd Respondent-Petitioner-Appellant and decided that 1st Respondent had been in possession of the disputed land on the date on which the information was filed.

The 2nd Respondent-Petitioner being dissatisfied with the said Order of the learned Magistrate dated 13.06.2014, had again invoked the revisionary jurisdiction of the High Court of Balapitiya.

However, the learned High Court Judge had dismissed the said application of the 2nd Respondent-Petitioner-Appellant on the basis that there is no such illegality noticed in the impugned Order dated 13.06.2014 of the learned Magistrate. Being aggrieved by the said Order, the 2nd Respondent-Petitioner-Appellant had invoked the jurisdiction of this Court.

The learned Counsel for the Appellant urged Court to observe that learned Magistrate had not taken into consideration the facts contained in the complaints made to Police Station and the facts contained in the affidavits marked 1වූ2, 1වූ3,1වූ4, and 1වූ5 filed on behalf of the 1st Respondent.

In this instance, Court draws the attention to the Judgment in the case ***Nandawathie and others Vs. Mahindasena [(2009) 2 SLR 218]***

> "When an Order of a Primary Court Judge is challenged by way of revision in the High Court, the High Court can examine only the legality of that Order and not the correction of that Order".
>
> It was emphasized by Ranjith Silva J;
> "I am of the opinion that this particular right of appeal in the circumstances should not be taken as an appeal in the true sense, but in fact as an application to examine the correctness, legality or the propriety of the Order made by the High Court Judge in the exercise of revisionary powers. The Court of Appeal should not under the guise of an appeal attempt to re-hear or re-evaluate the evidence led in the main case."

Therefore, in view of the aforecited Judgement, it is apparent that Court of Appeal is not expected to consider this as an appeal preferred against the Order of the Magistrate's Court. It is a duty of Court to consider whether this appeal originates from an Order of the Provincial High Court exercising its revisionary jurisdiction. The Provincial High Court also considers applications made against the Orders of the Magistrate's Court which are revision

applications and not appeals. The Court of Appeal is empowered to evaluate the correctness of the revisionary jurisdiction exercised by the Provincial High Court.

It is worthy to draw the attention of Court to Judgment in the case of ***Bandulasena and others Vs. G.K.Chaminda Kushantha [CA PHC 147/2009 C.A.M 27.09.2017]*** where Surasena J emphasized:

> "It would be relevant to bear in mind that the appeal before this Court is an appeal against a judgment pronounced by the Provincial High Court in exercising its revisionary jurisdiction. Thus, the task before this Court is not to consider an appeal against the Primary Court order but to consider an appeal in which an order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction is sought be impugned."

Section 74(2) of the Primary Courts' Procedure Act No. 44 of 1979 does not provide a right of appeal against the Order of the Primary Court.

> "Section 74(2) - An appeal shall not lie against any determination or order under this part."

However, in terms of Article 154(3) (b) read with Article 138 of the Constitution, the revisionary jurisdiction of the High Court can be invoked in a situation where a miscarriage of justice or any injustice is caused by the Order of the Primary Court Judge to the aggrieved party

The intention of the Legislature is introducing Part VII of the Primary Courts' Procedure Act No. 44 of 1979, is to prevent a breach of peace and not to embark on a protracted trial investigating title. Thus, if an aggrieved party wishes to establish his legal rights to the disputed portion of land, the Provincial High Court or the Court of Appeal is not the forum to have the legal rights of parties relating to the land in dispute adjudicated.

By operation of law, an aggrieved party before the Provincial High Court is allowed to prefer an appeal to the Court of Appeal. The Court of Appeal has to look into the matter whether the learned High Court Judge has properly exercised his duty when ascertaining if any injustice was caused to a party or whether a miscarriage of justice has occurred by Order of the learned Magistrate. However, the Court of Appeal is not empowered to correct the errors made by the learned Magistrate.

Therefore, preferring an appeal to the Court of Appeal will not serve the purpose intended in Primary Courts' Procedure Act No. 44 of 1979. The intention of the Legislature in introducing Part VIII of the Primary Courts' Procedure Act No. 44 of 1979 is to prevent a breach of peace and not to have prolonged or protracted hearings when determining civil rights of parties pertaining to the disputed portion of land. Since the Legislature in its wisdom specified a 3-month time frame for a matter to be concluded before the Primary Court, the said position is clearly reflected.

Obeysekara J. opined in the case ***Aluthhewage Harshani Chandrika and another Vs. Officer-in-Charge and another CA PHC 65/2003 [C.A.M 21.09.2020]***;

> "The rationale behind this principle is that the conferment of the special jurisdiction on a Judge of the Primary Court under Chapter VII of the Act is quasi-criminal in nature and is intended to facilitate the temporary settlement of the dispute between the parties so as to maintain the status quo until the rights of the parties are decided by a competent civil Court. Subject to this, every other concern however much prominent they may appear to be, will have to be placed next to the imperative necessity of preserving the peace."

In the instant case, the 2nd Party-Respondent-Petitioner-Appellant had frittered 13 years litigating the dispute arisen between parties on 2010.02.21.

In view of Section 74(1) of the said Act:

> 74(1) – An order under this Part shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit; and it shall be the duty of a Judge of a Primary Court who commences to hold an inquiry under this Part to explain the effect of these sections to the persons concerned in the dispute.

In this respect, it is worthy to note the original order of the Magistrate of Balapitiya dated 03.08.2010. It appears that the learned Magistrate has determined the matter under Section 68(3) of the Act in favour 1st Respondent-Respondent-Respondent in this appeal. Furthermore, the learned Primary Court Judge had directed parties to resolve their dispute by invoking the competent civil jurisdiction of court.

However, the 2nd Respondent-Petitioner-Appellant had not instituted civil action in the District Court but had invoked the revisionary jurisdiction of the Provincial High Court instead.

The learned High Court Judge had directed the Magistrate to re-inquire into the matter and the learned Magistrate had held against the 2nd Respondent-Petitioner-Appellant. Even after the said Order, the 2nd Respondent-Petitioner-Appellant had not resorted to civil legislation but invoked the revisionary jurisdiction of the Provincial High Court of the Southern Province Holden at Balapitiya instead.

Therefore, at this juncture, the Court of Appeal is inclined to determine if the learned High Court Judge has properly exercised his duty in ascertaining whether any grave injustice was caused to a party or whether a serious miscarriage of justice had occurred by the Order pronounced by the Magistrate exercising jurisdiction under Section 66 of the Primary Courts' Procedure Act No. 44 of 1979.

Thus, the Court of Appeal needs to ascertain the legality and propriety of the Order of the learned High Court Judge and not correct the errors made by the learned Magistrate.

Since the 1st Respondent-Respondent-Respondent was absent and unrepresented on the date of argument, the Counsel for the 2nd Respondent-Petitioner-Appellant moved to dispose the matter by way of written submissions already filed.

Perusing the written submissions of the Appellant, it is observable that it was the contention of the Appellant that learned Magistrate had not considered the facts contained in the complaints made by parties to the Police Station and the facts contained in the affidavits marked 1ඵ$_2$, 1ඵ$_3$, 1ඵ$_4$, and 1ඵ$_5$.

Furthermore, it was contended by the Appellant that although attention of the High Court Judge was drawn to complaint [2ඵ$_1$] dated 10.11.2009 made to the Police Station Karandeniya by 2nd Respondent-Petitioner-Appellant upon which an impertinent question of law pertaining to patent lack of jurisdiction of court was formulated, this had escaped the attention of the learned High Court Judge.

The learned High Court Judge had considered the complaint dated 10.11.2009 of Sunil Jayaratne, a person who was not a party to the proceedings before the Magistrate's Court. However, it was revealed in evidence that the said Sunil Jayaratne is the husband of Appellant. It

appears that the said Sunil Jayaratne had not intervened in the Magistrate's Court case after the notice was affixed on the disputed land.

According to the said complaint [2අ1], it does not reveal whether the said Sunil Jayaratne or his wife, the Appellant, was dispossessed from the land in dispute.

It is pertinent to note that the information filed in the Magistrate's Court was based on the complaint made on 21.02.2010. Apparently, the said complaint was made after 3 months from the date of making the complaint 2අ1.

Jurisdiction was conferred on the Primary Court in terms of Section 66(1) (a) of the Act, with the information based on the complaint dated 21.02.2010 being filed by the Karandeniya Police. Thus, the objection taken up in respect of patent lack of jurisdiction is untenable in law.

The learned High Court Judge has analyzed and evaluated the evidence placed before the learned Magistrate and come to the correct finding of fact and law and determined that there is no illegality or irregularity in the impugned Order of the learned Magistrate.

Hence, it is seen that a failure of justice does not exist for 2nd Respondent-Petitioner-Appellant to invoke the revisionary jurisdiction of the High Court of Balapitiya. Thus, we see no reason to interfere with the Order of the learned High Court Judge dated 24.05.2016.

Thus, the appeal is dismissed with cost.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL